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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,898	07/24/2003	Peter Hemingway	23615/9	1195

22879 7590 06/02/2005

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FORT COLLINS, CO 80527-2400

EXAMINER

LEE, PATRICK J

ART UNIT	PAPER NUMBER
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2878

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/625,898	Applicant(s) HEMINGWAY, PETER	
	Examiner Patrick J. Lee	Art Unit 2878	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to amendment filed 5/6/2005.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on-sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 & 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,799,687 to Davis et al.

With respect to claim 1, Davis et al disclose a device comprising IR LEDs (152) and switches (155-156). The LEDs are arranged to shine light onto areas (150, 162) from different angles and can sense light reflected from the sampled areas. The light sensed is sent as an electronic signal output to switches (155-156). Davis et al disclose the LEDs being able to supply and receive different light emissions in order to differentiate between the different users (see column 3, lines 60-63).

With respect to claim 2, Davis et al illustrate the LEDs disposed at a different angle in figure 9.

With respect to claim 6, Davis et al disclose a device comprising IR LEDs (152) and switches (155-156). The LEDs are arranged to shine light onto areas (150, 162) from different angles and can sense light reflected from the sampled areas. The light sensed is sent as an electronic signal output to switches (155-156).

With respect to claim 7, Davis et al disclose Oscillator 1 (153) coupled with switch (155) to toggle between a transmission and a detection mode (see column 5, lines 49-52).

With respect to claim 8, Davis et al disclose a device comprising IR LEDs (152) and switches (155-156). The LEDs are arranged to shine light onto areas (150, 162) from different angles and can sense light reflected from the sampled areas. The light sensed is sent as an electronic signal output to switches (155-156). Davis et al disclose the LEDs being able to supply and receive different light emissions in order to differentiate between the different users (see column 3, lines 60-63).

With respect to claim 9, Davis et al disclose Oscillator 1 (153) coupled with switch (155) to toggle between a transmission and a detection mode (see column 5, lines 49-52).

With respect to claim 10, Davis et al disclose a device comprising IR LEDs (152) and switches (155-156). The LEDs are arranged to shine light onto areas (150, 162) from different angles and can sense light reflected from the sampled areas. The light sensed is sent as an electronic signal output to switches (155-156). Davis et al disclose the LEDs being able to supply and receive different light emissions in order to differentiate between the different users (see column 3, lines 60-63).

With respect to claim 11-12, Davis et al disclose Oscillator 1 (153) coupled with switch (155) to toggle between a transmission and a detection mode (see column 5, lines 49-52).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,799,687 to Davis et al.

Davis et al disclose the device as described in the discussion of claims 1-2 & 6-12.

With respect to claim 3, Davis et al do not explicitly disclose a subset of LEDs used to illuminate the sample and another subset of LEDs to detect light reflected from the sample, but such would be obvious to one of ordinary skill in the art as it would allow one LED to detect the light signal emitted from the other LED.

With respect to claim 4, the modified Davis et al disclose the devices located at different angles.

With respect to claim 5, the modified Davis et al disclose the device having switches (155) coupled with oscillator 1 (153) to result in toggling the detection and emission modes of the device.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Lee whose telephone number is (571) 272-2440. The examiner can normally be reached on Monday through Friday, 8:00 am to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David P. Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patrick J. Lee
Examiner
Art Unit 2878

PJL
May 25th, 2005



Stephone B. Allen
Primary Examiner